IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-687

THE LOUISIANA LAND AND EXPLORATION COMPANY,
Petitioner,

v.

FEDERAL ENERGY REGULATORY COMMISSION
AND
THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NEW YORK,
Respondents.

REPLY BRIEF OF PETITIONER TO BRIEFS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

H. H. HILLYER, JR.
1100 Whitney Building
New Orleans, Louisiana 70130

Attorney for Petitioner:
THE LOUISIANA LAND AND
EXPLORATION COMPANY

MILLING, BENSON, WOODWARD,
HILLYER, PIERSON & MILLER
1100 Whitney Building
New Orleans, Louisiana 70130

Of Counsel:

DI CESARE - PRINTING / WASHINGTON, D.C. 20006 / (202) 331-8101

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REPLY BRIEF OF PETITIONER TO BRIEFS IN OPPOSITION

The Federal Energy Regulatory Commission ("the Commission") and The Public Service Commission of the State of New York ("New York") have filed briefs in opposition to the petition of The Louisiana Land and Exploration Company ("Land Company") for certiorari. This reply brief is filed pursuant to Rule 24 (4) of this Court.

1. The Commission (Brief, pp. 9-10) and New York (Brief, pp. 5-6) argue that this case is not of sufficient importance to warrant certiorari, basing their argument on the *non sequitur* that no lease-sale is likely again to

occur. The statement is true; the conclusion drawn is fallacious. The recurring items are (a) requests for approval of assignments of leases to pipeline companies and (b) requests for "pegging" market value royalties. In the shadow of the ruling of the court of appeals no lessor will willingly accede to any such request.

2. The Commission, being unable to find record support for the innuendo of the court of appeals that Land Company "demanded" a "higher" royalty settlement as the price of consenting to a sublease, resorts to citing the Commission's own opinion (as found in Pet. App. 31a-34a). The quotation does not support the statement.

The record is uncontradicted—there is *no* evidence to the contrary—that Land Company did not wish to change its royalty provisions and that it was only at Tennessee's insistence that the market value was "pegged."

The court of appeals and the Commission each drew an entirely permissible inference that if Land Company had not wished to consent to the sublease it could have withheld its consent. But then they each drew an entirely impermissible and unsubstantiated "inference" that because Land Company "could" have withheld its consent, it *did* withhold its consent until it had received a "higher" basis of royalty settlement. If there had been any evidence in the record to support this inference, the Commission or the court of appeals would have cited it, by book and page, long ere this.

3. Contrary to the Commission's statement (Brief, p. 7), the Natural Gas Policy Act of 1978, P.L. 95-621, 92 Stat. 3350, does *not* codify *Rayne Field (United Gas Improvement Co.* v. *Continental Oil Co.*, 381 U.S. 392

(1965). On the contrary it substitutes a reasonably precise statutory jurisdictional definition for *Rayne Field's* Delphic metamorphology.

In any event, the new Act neither adds to nor detracts from the importance of the questions here presented, nor does it point to the direction of decision.

4. Concerning Land Company's proferred evidence, the Commission says that it "does not affect the merits of the Commission's holding. . . " (Brief, p. 9). Apparently, the Commission draws no distinction between a refund order which is supported by the record and one which is in the teeth of the evidence. Also, the Commission forgets that Land Company was supposed to have demanded "higher" royalties, while the proferred evidence shows that the royalties were "lower."

CONCLUSION

For the reasons set forth in the petition, the petition for a writ of certiorari should be granted.

Respectfully submitted,

/s/ H. H. HILLYER, JR.

H. H. HILLYER, JR.
100 Whitney Building
New Orleans, Louisiana 70130

Attorney for Petitioner:
THE LOUISIANA LAND AND
EXPLORATION COMPANY,

Of Counsel:
MILLING, BENSON, WOODWARD,
HILLYER, PIERSON & MILLER

January, 1979.